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State v. Lewis Appellant's Brief Dckt. 43400

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43400
Plaintiff-Respondent,)	
)	PAYETTE COUNTY NO. CR 2012-1093
v.)	
)	
JOHN D. LEWIS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

John D. Lewis appeals from his judgment of conviction for two counts of burglary. Mr. Lewis was found guilty following a jury trial and the district court imposed concurrent unified sentences of ten years, with five years fixed. Mr. Lewis now appeals, and he asserts that the district court abused its discretion by imposing excessive sentences.

Statement of the Facts & Course of Proceedings

On October 17, 2009, Ashley McGunnigle reported that she went home and discovered that a window had been broken above her door. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) She had to get back to work so did not have an

opportunity to see if anything was missing. (PSI, p.3.) Later in the day, officers were dispatched to her residence they observed broken glass, a bloody rock in the hallway, and blood on several items in the home. (PSI, p.3.) Items had been taken from her residence. (PSI, p.3.) Ms. McGunnigle initially suspected that her boyfriend's ex-girlfriend and her brother, who did not like her, might be responsible. (PSI, p.3.)

On December 5, 2009, police officers were dispatched to the Main Street Flea Market in Payette in response to a burglary. (PSI, p.4.) Blood was also found at this scene. (PSI, p.4.) A blood sample from Mr. Lewis matched the DNA profile from the blood obtained at the Flea Market and Ms. McGunnigle's residence. (PSI, p.4.) Mr. Lewis stated that he was at his home in Ontario, Oregon, when these crimes were committed and that he had no connection to Ms. McGunnigle or the Flea Market. (PSI, p.5.)

Mr. Lewis was charged with two counts of burglary. (R., p.181.) He proceeded to trial, where he was found guilty. (R., p.246.) The district court imposed concurrent unified sentences of ten years, with five years fixed. (R., p.314.) Mr. Lewis initially did not appeal, but the district court issued an amended judgment pursuant to a grant of post-conviction relief so that Mr. Lewis could appeal. (R., p.317.) Mr. Lewis timely appealed from the amended judgment. (R., p.327.) On appeal, he asserts that the district court abused its discretion by imposing excessive sentences.

ISSUE

Did the district court abuse its discretion when it imposed concurrent unified sentences of ten years, with five years fixed, upon Mr. Lewis following his convictions for two counts of burglary?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Concurrent Unified Sentences Of Ten Years, With Five Years Fixed, Upon Mr. Lewis Following His Convictions For Two Counts Of Burglary

Mr. Lewis asserts that, given any view of the facts, his unified sentences of ten years, with five years fixed, are excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Lewis does not allege that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Lewis must show that in light of the governing criteria, the sentences were excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Mr. Lewis addressed the district court at the sentencing hearing. He stated,

I can't change the past. I done a lot of stupid stuff.

I can change the future. I have a chance right now to enter into the Carlton House. They said at completion of the program that they would put me into an aftercare and in aftercare I'd be able to go to the high schools and junior highs and tell them my story and maybe help somebody else so that they don't end up the way that I have.

This is my turning point. I'd ask the Court to give me probation. I will complete everything that you want. I'll stay in contact with you personally, with letters telling you what I'm doing.

This is – I just want to be close to my family to take care of my mom and live out my days. I don't want to live them out in prison.

(Sent. Tr., p.12, L.15 – p.13, L.5.)

Counsel for Mr. Lewis informed the court that Mr. Lewis “has got some medical issues, got some mental health issues, definitely has some drug issues. He has arranged to, if the Court would place him on probation, to go to the Carlton House in Eugene, Oregon, which is a sober living, long-term treatment setting.” (Sent. Tr., p.11, Ls.12-18.) Mr. Lewis stated that he had been diagnosed with schizophrenia as a child and had lived with it all of his life. (PSI, p.18.) He used to suffer from visual hallucinations. (PSI, p.18.)

Further, Mr. Lewis's mother, who lives in Oakridge, Oregon, was 87-year-old and Mr. Lewis was her caregiver. (Sent. Tr., p.11, Ls. 19-21.) Counsel noted that Mr. Lewis had done probation and completed parole before. (Sent. Tr., p.11, Ls.22-25.) Counsel therefore requested that Court place him on probation and transfer him to Oregon pursuant to an interstate compact. (Sent. Tr., p.12, Ls.3-10.)

In this case, Mr. Lewis acknowledged that he had substance abuse issues and took steps to confront that problem by seeking treatment through the Carlton House. He had the support of his family, specifically his mother, who needs his support. While

Mr. Lewis does have a criminal record, as counsel noted, he had done probation before and had completed parole. Considering this information, Mr. Lewis respectfully submits that the district court abused its discretion by imposing concurrent unified sentences of ten years, with five years fixed.

CONCLUSION

Mr. Lewis respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 16th day of June, 2016.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of June, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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JMC/eas